



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ELMER J. AND SYBELL E. FAUL)

Appearances:

For Appellants: Francis Heisler, Attorney at Law

For Respondent: A. Ben Jacobson, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Elmer J. and Sybell E. Faul to a proposed assessment of additional personal income tax in the amount of \$1,750.66 for the year 1952. Sybell E. Faul is involved only because she filed a joint return with her husband, Elmer J. Faul. Hereafter, Elmer J. Faul will be referred to as the Appellant.

In April, 1952, Appellant received a check from the United States Government in the amount of \$68,837.96, as an informer's award. He filed his federal and State income tax returns for the year 1952 on the theory that the award was paid to him for personal services rendered over a period in excess of thirty-six months, and that consequently he was entitled to allocate it ratably over the period during which the services were rendered in accordance with Section 107(a) of the Internal Revenue Code of 1939 as well as Section 17054 (now 18241) of the Revenue and Taxation Code. The Bureau of Internal Revenue and Respondent both took the position that Appellant was not entitled to the income allocation benefits of the substantially identical code sections.

In an adjudication by the Tax Court of the United States, affirmed by a United States Court of Appeals, it was concluded that Appellant had "not established that Faul performed services for the Bureau of Internal Revenue over a 36-month period and hence may not claim the benefit of section 107(a)." Elmer J. Faul, 29 T.C. 450, 455, aff'd 263 F. 2d 645.

The Tax Court determined that from approximately February, 1941, to March, 1946, Appellant was employed as office manager by a firm in California. Following 1942, he spoke to his employer about the fraudulent manner in which the books and records of the company were being maintained and warned him of the danger of exposing himself to tax fraud charges. Although the company hired

Appeal of Elmer J. and Sybell E. Faul

someone else to keep the books and tax records, Appellant continued to worry about his own exposure to fraud charges which might be brought against his employer and, in 1944, went to San Francisco and talked to "some Government man" to find out what he should do to protect himself. Hewas told that he should make records and have evidence to prove that he was not involved in any fraud. There was no evidence to show that Appellant identified his employer at this conference.

In order to shield himself, Appellant commenced to compile records in February or March of 1944. He continued making records until March, 1946, when he was discharged by his employer.

On February 22, 1947, Appellant had an interview with a chief field deputy in the office of the collector of internal revenue in California, and submitted a memorandum of alleged violations of federal revenue laws by Appellant's past employer. On the same day he filed an application for an informer's award. Appellant supplied additional information between April and July, 1947.

On the basis of the foregoing facts, the Tax Court concluded that the work done by Appellant prior to February 22, 1947, did not constitute services for another person within the meaning of Section 107(a). The Tax Court further concluded that Appellant supplied no information subsequent to the fall of 1947.

Respondent relies upon the opinions of the Tax Court and the Circuit Court of Appeals. Appellant contends that these opinions do not set forth all the pertinent facts, especially since he was unable to testify before the Tax Court due to reasons of health. However, Appellant did not appear before us to give oral testimony nor was his deposition or affidavit offered as evidence. In short, Appellant has failed to supply us with any additional information in this proceeding. Consequently, we uphold the action of Respondent on the authority of the decisions of the Tax Court and the Circuit Court of Appeals.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Elmer J. and

Appeal of Elmer J. and Sybell E. Faul

Sybell E. Faul to a proposed assessment of additional personal income tax in the amount of \$1,750.66 for the year 1952 be and the same is hereby sustained.

Done at Pasadena, California, this 16th day of October,
1961, by the State Board of Equalization.

John W. Lynch, Chairman

George R. Reilly, Member

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary